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DEATH BY NEGLIGENCE.

Several questions of difficulty have arisen as to the nature of the damage which must be sustained in order to support an action under Lord Campbell's Act, 9 & 10 Vict. c. 93, for causing the death of a relative by negligence.[1] It was decided soon after the passing of

[1] The following is the provision of the English "Act for compensating the families of persons killed by accidents," (26th August, 1846, 9 & 10 Victoria, c. 93.) "That whensoever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, although the death shall have been caused under such circumstances as amount in law to felony.

That every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the beforementioned parties in such shares as the jury by their verdict shall find and direct." The reader may consult for the sake of the analogy, the "*Actio noxalis*" of the Roman Law. See Inst. lib. iv., tit. 8; Sandar's Justinian, 565; 2 Du Caurroy's Inst., p. 427, 8th ed., 1851; 3 Ortalan's Inst., p. 681, 6th ed., 1857; La Grange Maro. de Droit Rom., 543, 7th ed.; Schrader's Inst., p. 682, ed. 1832, in 4to; Gaius, lib. iv. pl. 75–80; p. 214, ed. Lack.—*Eds. Am. Law Reg.*

the statute, that the jury, in assessing the amount, were confined to the pecuniary loss, and could not take into consideration the mental suffering of the survivors; *Blake* vs. *The Midland Railway Company*, 18 Q. B. 93; but it was not until lately that it was held that a reasonable expectation of the continuance of pecuniary advantage, without any legal right to it, is sufficient for the maintenance of this action. Such, however, is now the law as laid down by the Court of Exchequer in *Franklin* vs. *The South-eastern Railway Company*, 4 Jur., N. S., part 1, p. 565, and by the Court of Common Pleas in *Dalton* vs. *The South-eastern Railway Company*, 4 Jur., N. S., part 1, p. 711. In the former of these cases the plaintiff sued as administrator of his son, who had been killed through the negligence of the defendants. The plaintiff, a man of about sixty years of age, was the porter at St. Thomas's Hospital; the son, who was twenty-three years of age, was in the habit of carrying coals into the wards of the hospital, for which the father received 3*s.* 6*d.* per week. There was no contract between them, but this state of things had continued for a long period. The jury having returned a verdict for 75*l.* damages, it was upheld by the court in banc, although they considered that the damages were excessive. The Lord Chief Baron, delivering the judgment of the court, said—"It has been contended that the plaintiff must show a legal damage. . . . . The statute does not in terms say on what principle the action it gives is to be maintainable, nor on what principle the damages are to be assessed; and the only way to ascertain what it does is to show what it does not mean. Now, it is clear that damage must be shown, for the jury are to 'give such damages as they may think proportioned to the injury.' It has been held that these damages are not to be given as a solatium, but are to be given in reference to a pecuniary loss. That was so decided for the first time in banc in *Blake* vs. *The Midland Railway Company*, 18 Q. B. 93. That case was tried before Parke, B., who told the jury that the Lord Chief Baron had frequently ruled at Nisi Prius, and without objection, that the claim for damage must be founded on pecuniary loss, actual or expected, and that mere injury to feelings could not be considered. It is also clear that the damages are not to be given merely in reference to the loss of a legal right, for they

are to be distributed among relations only, and not among all individuals sustaining such a loss; and accordingly the practice has not been to ascertain what benefit could have been enforced by the claimants had the deceased lived, and to give damages limited thereby. If, then, the damages are not to be calculated on either of these principles, nothing remains except that they should be calculated in reference to a reasonable expectation of pecuniary benefit, as of right or otherwise, from the continuance of the life. Whether the plaintiff had any such reasonable expectation of benefit from the continuance of his son's life, and if so, to what extent, were the questions left in this case to the jury. The proper question then was left—if there was any evidence in support of the affirmative of it. We think there was. The plaintiff was old, and getting infirm; the son was young, earning good wages, and apparently well disposed to assist his father, and, in fact, he had so assisted him to the value of 3*s.* 6*d.* a week. We do not say that it was necessary that actual benefit should have been derived—a reasonable expectation is enough; and such reasonable expectation might well exist, though, from the father not being in need, the son had never done anything for him. On the other hand, a jury certainly ought not to make a guess in the matter, but ought to be substantially satisfied that there has been a loss of reasonable expectation of sensible and appreciable pecuniary benefit which might have been reasonably expected from the continuance of the life."

In *Dalton* vs. *The South-eastern Railway Company*, the action was also brought by the father on account of the death of his son. The plaintiff was an agricultural laborer, and lived, with his wife and a large family, in very humble circumstances. The deceased son did not live with his father, but earned good wages at a pianoforte maker's in London, and had been in the habit, for seven or eight years, of visiting his parents once a fortnight, and making them small presents. He had also contributed to their support by becoming responsible to a butcher for the supply of some meat to them. The plaintiff had incurred expenses for the funeral of his son and for mourning. The jury awarded to the plaintiff 120*l.* for the loss sustained by the death, and 25*l.* for the funeral and mourning expenses. This verdict was upheld in banc except as to the

funeral expenses. WILLES, J., in delivering the judgment of the court, said—"The great question in this case is disposed of by the judgment of the Court of Exchequer in *Franklin* vs. *The South-eastern Railway Company*, by which it is decided (with our entire concurrence) that legal liability alone is not the test of injury in respect of which damages may be recovered under Lord Campbell's Act, but that the reasonable expectation of pecuniary advantage by the relation remaining alive may be taken into account by the jury, and damages may be given in respect of that expectation being disappointed, and the probable pecuniary loss thereby occasioned. . . As to the expenses of the funeral and mourning, however, we think they ought not to be allowed. The subject-matter of the statute is compensation for injury by reason of the relative not being alive, and there is no language in the statute referring to the ceremonial of respect paid to the memory of the deceased in his funeral, or in putting on mourning for his loss."[2]

[2] London Jurist.

NOTE.—It is a dictate of justice that parties immediately interested in the life of a person wrongfully killed by another should be compensated by him for the fatal injury he has inflicted. Statutes have therefore been enacted in England and in some American States, designed to compensate the persons having the greatest pecuniary interest in the life of the deceased party, as the widow, children, heirs or next of kin, for their pecuniary loss which they have thus suffered from the wrongful act of another, the damages being usually limited to a certain amount; such statutes even when applied to companies previously incorporated are constitutional, and do not impair the obligation of the contract implied in the charter.

The remedy given may be an action against the wrong-doer for damages by the administrator or executor of the deceased for the benefit of the interested relatives. This is the remedy provided in England and by the statutes of New York, Pennsylvania, Ohio and Indiana. See Indianapolis Railroad Co. *vs.* Bradshaw, 6 Ind. 146; Madison and Indianapolis Railroad Co. *vs.* Beacon, id. 205. The provision of the statute of Ohio, enacted 25th March, 1851, is the same as that of New York, with merely verbal variations, except that in the first section the words "murder in the first or second degree, or manslaughter," are substituted for felony, and the provision for a criminal process is omitted, Swan's Stat. of Ohio, (1854,) pp. 707, 708. The injury, in order to be actionable under the Statute of Ohio, must have been inflicted within the State. Campbell *vs.* Rogers, 2 Handy, Superior Court of Cincinnati, 110; 4 Am. Law Reg. 747; 19 Law Rep. (Oct., 1856,) p. 329. A husband cannot, under it, recover for the killing of his wife, or for the loss of her comfort, services and society, but may recover for the expenditures actually made in consequence of the fatal injury. Worley *vs.* C. H. & D. R. R. Co. 1 Handy, 481. The act of New York limits its

remedy to the wife and next of kin, and the husband has no right of action under it for the killing of his wife. Lucas *vs.* N. Y. Central R. R. Co. 21 Barb. 245; Worley *vs.* C. H. & D. R. R. Co. 1 Handy's Superior Ct. of Cin. 481; Penn. R. R. Co. *vs.* M'Closkey, 23 Penn. State, 526. In Massachusetts and New Hampshire, the remedy given to the parties pecuniarily interested in the life of a person unlawfully killed, is by a fine recoverable by indictment prosecuted by the State against the wrong-doer for the benefit of the parties designated by the statute; and this remedy only being provided, an action for damages cannot be sustained. The act of Massachusetts confines its remedy to fatal injuries suffered by a passenger from the defaults of certain classes of common carriers; and that of New Hampshire to those arising from the defaults of the proprietors of railroads. In New Hampshire it is held that the indictment must be against the corporation, and not against the individual stockholders, and must show that there are persons living entitled to the fine. State *vs.* Gilmore, 4 Foster, 461; B. C. & M. R. R. Co. *vs.* The State, 32 N. H. 215; Carey *vs.* Berkshire R. R. Co. 1 Cush. 475; Skinner *vs.* Housatonic R. R. Corp. id; Pierce on Railroads, 257. 1 Tidd's Pract., p. 9. Note A. 4th Am. ed., where the legislation of a number of the states is collected: Consult Redfield on Railways, 336, and particularly the notes on pp. 337, 338, 339, 340, and the very late case of Coakley *vs.* The North Penn. R. R. 6 Am. L. Reg. 355, opinion per STRONG, J.—*Eds. Am. Law Reg.*

RECENT AMERICAN DECISIONS.

In the United States District Court for the Southern District of New York, May Term, 1858.

WILLIAM E. COLLIS AND WILLIAM MITCHELL, *vs.* THE SCHOONER CŒRNINE, FRALEY W. MOORE, SIMON J. LATHAN, AND LORENZO A. WEBB, CLAIMANTS.

1. Where the outfit and supply of materials for building and equipping a vessel, and making her ready for sea, by furnishing ship-chandlery, sails, rigging, materials, &c., were bought in New York, and sent to Plymouth, North Carolina, and used by the vessel, which rendered her seaworthy, and enabled her to make voyages and earn freight; it was held, in compliance with the decisions of the Supreme Court of the United States in Pratt *vs.* Reid, 19. How. 359, and Jefferson *vs.* Beers, 20 How. 393, that no admiralty lien existed, and no jurisdiction attached in the Court of Admiralty.
2. A contract made in a port of the United States, to construct a vessel in a port of another state, by actually building her or by supplying materials for such construction, is not a maritime contract, creating a lien upon the vessel for the value of the materials, supplies, or labor, which is enforceable in the Admiralty.
3. Pratt *vs.* Reid, 19. How. 359, and Jefferson *vs.* Beers, 20 How. 393, commented on.